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Introduction

Laura N. Gasaway

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Introduction

Cover Page Footnote

International Law; Commercial Law; Law

Introduction

Laura N. Gasaway†

In early 2012, the *North Carolina Journal of International Law and Commercial Regulation* and the *North Carolina Journal of Law and Technology* held a joint symposium, “Anticipating Dissent: When Legal Frameworks, U.S. Commerce and Foreign Markets Intersect.”¹ The symposium represented a historic first collaboration between these two journals and resulted in an informative program focusing on businesses with an international component, as well as local businesses influenced by the global marketplace. The internationalization of businesses, driven by the development of technology, made this collaboration not only possible, but also necessary. Speakers addressed novel issues arising in connection with the development of global marketplaces and the means by which governments, international organizations, businesses, and lawyers seek to identify and mitigate these problems. Nicholas Didow, Jr., Associate Professor of Marketing at the University of North Carolina Kenan-Flagler Business School, delivered the keynote speech. Speakers were divided into four panels and each panel addressed one of the following topics: *International Dispute Resolution*,² *Disputes Arising from Arbitration Awards Abroad*,³ *Tensions Produced by*

† Paul B. Eaton Distinguished Professor of Law at University of North Carolina School of Law. Professor Gasaway teaches courses on advanced copyright law, art law, and cyberspace law at the University of North Carolina School of Law.

¹ See *Anticipating Dissension: When Legal Frameworks, U.S. Commerce and Foreign Markets Intersect*, N.C. J. INT’L L. & COM. REG. (Jan. 27, 2012), available at <http://www.law.unc.edu/journals/ncilj/symposium/default.aspx>. The symposium took place on January 27, 2012 at the UNC George Watts Hill Alumni Center and hosted panels discussing: arbitration agreements, choice of law agreements, intergovernmental IP laws, commonly used trade terms, and franchising as means of limiting discord within the global marketplace.

² Speakers for this panel included: Anthony Biller, Attorney, Coats & Bennett P.L.L.C.; Ethan Berghoff, Partner, Baker & McKenzie L.L.P.; Timothy Holdbrook, Professor of Law, Emory University; Peter Rutledge, Professor of Law, University of Georgia.

³ Speakers for this panel included: Robert Bird, Associate Professor, University of Connecticut School of Business; Christoph Henkel, Assistant Professor, Mississippi

Trademark Law Internationally,⁴ and *Direct Investment and Franchising in an International Setting*.⁵

This journal and the *North Carolina Journal of Law and Technology* are each publishing papers from the symposium. Papers included in this issue are from the *Disputes Arising from Arbitration Awards Abroad* panel. While arbitration has increasingly been used to settle disputes in the international context, arbitration awards can be somewhat problematic, raising their own unique problems. For example, what happens when one country seeks to enforce an arbitration award but the other country holds it invalid?

S.I. Strong's⁶ article, *Resolving Mass Legal Disputes through Class Arbitration in the United States and Canada Compared*,⁷ focuses on class arbitration, which she characterizes as controversial. Both the United States and Canada have exhibited recent interest in this procedure, although neither has developed a truly satisfactory solution to the problems that occur in arbitrating mass claims.⁸ Professor Strong's article provides a comparative analysis that may be of interest to other countries considering mass arbitration as a dispute mechanism.

Enforcement of Annulled Arbitration Awards: A Company Perspective and an Evaluation of a "New" New York Convention,⁹

College of Law; Jacqueline Nolan-Haley, Professor of Law, Fordham University School of Law; and S.I. Strong, Associate Professor of Law, University of Missouri School of Law.

⁴ Speakers for this panel included: Trevor Schmidt, Associate Attorney, Moore & Van Allen P.L.L.C.; Marshall Leaffer, Distinguished Scholar in Intellectual Property Law and University Fellow, Indiana University Maurer School of Law; Jay Kesan, Professor of Law, University of Illinois School of Law.

⁵ Speakers for this panel included: Kenneth Rosen, Associate Professor of Law, University of Alabama School of Law; Shruti Rana, Associate Professor of Law, University of Maryland Francis King Carey School of Law; Jason Yackee, Assistant Professor of Law, University of Wisconsin School of Law.

⁶ S.I. Strong is Associate Professor of Law at the University of Missouri School of Law, where she teaches international commercial arbitration, transnational litigation, comparative law, lawyering, estates and trusts.

⁷ S.I. Strong, *Resolving Mass Legal Disputes through Class Arbitration in the United States and Canada Compared*, 37 N.C. J. INT'L L. & COM. REG. 921 (2012).

⁸ See *id.* (discussing how despite the similarity of interest in the availability of the arbitration and judicial class actions by both the U.S. and Canada, these two countries have taken a different approach to class arbitration with differing results).

⁹ Robert C. Bird, *Enforcement of Annulled Arbitration Awards: A Company*

written by Robert C. Bird,¹⁰ discusses the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, popularly known as the New York Convention, which has become one of the most successful international conventions, with over 141 nations having signed onto it.¹¹ The article examines enforcement of annulled arbitration awards, which is of concern to many international firms.¹² The article's goal is to seek a solution that would be uniform, stable, and widely applicable across many national jurisdictions.

Jacqueline M. Nolan-Haley's¹³ article, *Is Europe Headed Down the Primrose Path with Mandatory Mediation*,¹⁴ highlights problems that Europe is experiencing with citizens' access to justice caused by court delays and the high cost of litigation. These problems have increased interest in alternate dispute resolution ("ADR"); the European Union has intensively promoted mediation and other forms of ADR through the 2008 Mediation Directive.¹⁵ Her article cautions that compulsory mediation programs implemented under the Directive may be problematic and could result in interference with citizens' real access to justice.

*Confidentiality in International Commercial Arbitration and the Work-Product Doctrine*¹⁶ is authored by Christoph Henkel.¹⁷

Perspective and an Evaluation of a 'New' New York Convention, 37 N.C. J. INT'L L. & COM. REG. 1013 (2012).

¹⁰ Professor Bird is an Associate Professor and Ackerman Scholar in the Marketing Department at the University of Connecticut School of Business. He teaches courses in employment law, relational contract theory, international intellectual property law, law and strategy, and trademark infringement and dilution.

¹¹ See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

¹² See generally Bird, *supra* note 8 (discussing how enforcement of annulled arbitration awards has been viewed with anxiety by international firms).

¹³ Professor Nolan-Haley is Professor of Law at Fordham Law School where she teaches alternative dispute resolution, international conflict resolution, international organizations, and mediation.

¹⁴ Jacqueline M. Nolan-Haley, *Is Europe Headed down the Primrose Path with Mandatory Mediation?*, 37 N.C. J. INT'L L. & COM. REG. 981 (2012).

¹⁵ See generally *id.* (discussing how the EU has funded mediation and ADR projects in both commercial and public justice areas and has taken various measures in promoting ADR process).

¹⁶ Christoph Henkel, *Confidentiality in International Commercial Arbitration and the Work-Product Doctrine*, 37 N.C. J. INT'L L. & COM. REG. 1059 (2012).

International arbitration proceedings are supposedly both private and confidential, as businesses rely on them to protect intellectual property rights.¹⁸ However, Henkel points out how a number of courts have compelled disclosure of documents that are part of these arbitration awards despite their presumed confidentiality.¹⁹ The article highlights the need to realize that confidentiality may only be illusory.

Alternate dispute resolution offers many advantages for companies engaged in international business, as well as to those that are simply impacted by the globalization of business. Taken together, these articles discuss the advantages, as well as the problems ADR may engender, and offer some tools to solve these problems. The stakes are high and it is essential to identify and implement solutions to achieve the promise of ADR.

¹⁷ Christoph Henkel is an Assistant Professor at Mississippi College of Law, where he teaches domestic and international commercial law, bankruptcy, and European Union law.

¹⁸ See generally Henkel, *supra* note 16. (pointing out that many parties assume that confidential business information, such as intellectual property rights, may be better protected in an arbitration setting when compared to public court proceedings).

¹⁹ See *id.* (discussing how increasing number of courts around the world seem to agree that disclosure of documents and materials produced during arbitrations may be compelled regardless of any express confidentiality agreement entered into between parties).